



**CALIFORNIA STATE PERSONNEL BOARD**

801 Capitol Mall • Sacramento, CA 95814

**Date of Issue: December 15, 2000**

**Destroy Date: December 14, 2001**

**URGENT ACTION REQUIRED**

MEMO TO: ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS  
DEPARTMENTAL DIRECTORS  
PERSONNEL OFFICERS  
EQUAL EMPLOYMENT OPPORTUNITY OFFICERS

SUBJECT: RESCISSION OF PERSONNEL MANAGEMENT POLICY AND  
PROCEDURES MANUAL (PMPPM) SECTION 375 REGARDING STATE  
EMPLOYMENT HEALTH QUESTIONNAIRE (STD 610 HQ (REV. 5-96))

This Memorandum is to inform you that Assembly Bill 2222 was Chaptered on September 30, 2000. This bill, effective January 1, 2001, made several significant amendments to California's Fair Employment and Housing Act (FEHA).<sup>1</sup> One of these amendments concerns the type of medical disclosures that employers can require of job applicants after a conditional job offer has been extended to the applicant. More specifically, Government Code section 12940 now provides, in pertinent part:

It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification or, except where based upon applicable security regulations established by the United States or the State of California:

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

---

<sup>1</sup> Gov't Code § 12920 *et seq.*

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, ***provided that the examination or inquiry is job-related and consistent with business necessity*** and that all entering employees in the same job classification are subject to the same examination or inquiry.<sup>2</sup>

Therefore, as of January 1, 2001, the FEHA will be more restrictive than the Americans with Disabilities Act of 1990 (42 U.S.C. § 12111 *et seq.*) (ADA) with regard to the type of medical disclosure that employers can require of prospective employees.<sup>3</sup>

The current Health Questionnaire (Form STD. 610 HQ (REV. 5-96)), calls for job applicants to answer a variety of health-related questions. Several of these questions may not necessarily be “job related and consistent with business necessity,” depending upon the position in question. As such, the current questionnaire will not comply with the requirements of Section 12940, as amended. Given that fact, **the provisions of PMPPM Section 375 relating to the current Health Questionnaire are hereby rescinded.** The SPB anticipates promulgating a revised version of Section 375 prior to January 1, 2001.

**Questions from the current Health Questionnaires<sup>4</sup> may only be used after January 1, 2001, if the department can demonstrate that each question utilized is consistent with business necessity and related to the applicant’s ability to perform essential job functions.** This determination should be based upon an analysis of the essential functions of the specific job in question and the actual physical

---

<sup>2</sup> Gov’t Code § 12940(e) (emphasis added).

<sup>3</sup> The ADA does not limit an employer’s medical inquiries to those questions that are “job related and consistent with business necessity.” Since the FEHA specifically provides that it supercedes the ADA in those situations where it affords employees greater protection, the provisions of Government Code section 12940, and not the applicable provisions of the ADA, will be controlling on employers in California.

<sup>4</sup> The “job-related and consistent with business necessity” standard will apply to all post-offer, pre-employment inquiries, including those contained on Form STD. 610 HQ (REV. 5-96) and STD. 610 (11/86). However, as a practical matter, the STD. 610 (11/86) Health Questionnaire, and the related medical/psychological examinations, are more likely to meet the “job-related and consistent with business necessity” standard than is the STD. 610 HQ (REV. 5/96) Health Questionnaire. This is because medical examinations and other medical inquiries are likely to be job-related and necessary when the work of an employee directly implicates workplace safety or public safety. Such safety concerns are likely to be present in many of the jobs currently subject to STD. 610 (11/86). State agencies should review positions subject to STD. 610 (11/86) to ensure that the medical questionnaires and examinations are truly necessary given the particular job duties and safety concerns at issue.

and/or psychological requirements necessary to perform those essential functions.<sup>5</sup> The determination should not be based upon the duties generally performed by the classification that encompasses the position. Instead, any health-related inquiry must be specifically related to the essential duties of the position, not the classification in question, and must be consistent with business necessity.

For example, if typing is an essential function for a particular Office Assistant position, it probably will be acceptable to inquire as to whether an applicant/new employee for that position has any functional limitations in his or her wrists or hands that would interfere with the person's ability to perform the job, with accommodations if necessary.

Any revised Health Questionnaire will no longer contain the requirement that the applicant provide a signed "Release of Medical Records." Such a release, however, may be required for those classifications described in the next paragraph. This requirement has been rescinded because such a broad release of medical information does not conform to the job-specific nature of permissible inquiries for a variety of positions. A more limited release may be required if a department can demonstrate that the medical information sought is necessary and pertains to the individual's ability to perform the essential functions of the position in question or to substantiate the need for a requested reasonable accommodation.

It is important to note that the FEHA, as amended, will not preclude employers from requiring certain job applicants to undergo a physical examination as a prerequisite to employment. Applicants for positions that directly implicate workplace safety and/or public safety, such as peace officers, heavy equipment operators, etc., may still be subject to a much more rigorous health screening process than are applicants for positions that do not have such requirements.

It is also important to note that legal standards concerning the retention of medical records regarding applicants and employees has not changed. Consequently, if an employer possesses medical information regarding an applicant or employee, the employer is required to store such information in a confidential manner, consistent with all applicable state and federal laws.

---

<sup>5</sup> An "essential function" may be determined by an analysis of, among other things: (1) if the position exists to perform the function; (2) if there are a limited number of employees available who could perform the function; (3) if the function is highly specialized; (4) the employer's judgment; (5) a written job description prepared before advertising or interviewing for the job; (6) the amount of time spent performing the function; (7) the consequences of not requiring someone in the job to perform the function; (8) the terms of the collective bargaining agreement; and (9) the work experience of people who have performed the job and the experience of people currently performing the job.

**CONTACT PERSONS:**

Please direct any legal questions regarding the Memorandum to Staff Counsel Bruce Monfross at (916) 653-1456, or write to Bruce Monfross at the State Personnel Board, 801 Capitol Mall, MS 53, Sacramento, CA 95814. Medical questions should be directed to the State Medical Officer, Stephen Weyers, M.D., at (916) 653-0790. Any other questions or suggestions on the revised PMPPM Section 375 should be directed to Jerry Donel, Staff Services Manager, at (916) 653-1717. Each of the individuals listed above may be reached by TDD at (916) 653-1498.

Walter Vaughn  
Executive Officer